

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

TOM'S TRUCKING  
Respondent

Case Nos.: I-00-11261  
I-00-11281  
I-00-11262  
I-00-11282  
(consolidated)

**FINAL ORDER**

**I. Introduction**

These consolidated cases arise under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 20 Chapter 9 of the District of Columbia Municipal Regulations ("DCMR"). By Notices of Infraction (No. 00-11261 and 00-11262) served by certified mail, the Government charged Respondent Tom's Trucking with two violations of 20 DCMR 900.1. Section 900.1 prohibits, with certain exceptions, motor vehicles from idling their engines for more than three (3) minutes while parked, stopped or standing. The Notices of Infraction alleged that two of Respondent's trucks (identified as having Virginia Tag Nos. 15813P and 26476P) committed the violations on October 5, 2001 at 2001 5<sup>th</sup> Street, N.E. and sought a fine of \$500 for each violation, for a total of \$1,000.

Respondent did not file answers to the Notices of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on November 28, 2001, this

administrative court issued orders finding Respondent in default, assessing combined statutory penalties of \$1,000 as required by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve second Notices of Infraction.

The Government served the second Notices of Infraction (Nos. 00-11281 and 00-11282) on December 7, 2001. Respondent also did not answer those Notices within twenty days of service. Accordingly, on January 17, 2002, Final Notices of Default were issued finding Respondent in default on the second Notices of Infraction and assessing combined statutory penalties of \$2,000 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1801.04(a)(2)(B). The Final Notices of Default also set February 13, 2002 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines or statutory penalties.

Kimberly Katzenbarger, Esq. appeared at the February 13<sup>th</sup> hearing on behalf of the Government. Exaltacion Comtreras, president of Respondent Tom's Trucking, appeared on behalf of Respondent. At the hearing, Respondent entered pleas of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2) to the charges set forth in the Notices of Infraction, and requested a reduction or suspension of any fines or statutory penalties.

At the hearing, Mr. Comtreras explained that his understanding of English is limited, and that he had hired an English-speaking office manager in March 2001 to process Respondent's correspondence and to address safety and compliance issues. Mr. Comtreras also explained that, despite these efforts, he did not learn of the Notices of Infraction until he personally retrieved the Final Notices of Default from the United States Post Office. Upon questioning the office

manager, Mr. Comtreras determined that the office manager had apparently misunderstood the proper response time for the Notices of Infraction. Finally, Mr. Comtreras represented that a new office manager has been hired and that Respondent's drivers are now aware of the proscriptions contained in 20 DCMR 900.1. In light of Respondent's explanation and an anticipated multi-lingual effort on the part of the Government to educate the public about the requirements of 20 DCMR 900.1, the Government recommended a suspension of the assessed statutory penalties, and a reduction of the authorized fine to \$250 per violation, for a total fine of \$500.

## **II. Findings of Fact**

1. By its plea of Admit with Explanation, Respondent has admitted that its trucks violated 20 DCMR 900.1 on October 5, 2001 at 2001 5<sup>th</sup> Street, N.E. as charged in the captioned Notices of Infraction.
2. On October 5, 2001, two trucks owned by Respondent (identified as having Virginia Tag Nos. 15813P and 26476P) idled their engines for more than three minutes while parked at 2001 5<sup>th</sup> Street, N.E.
3. Respondent's president, who has a limited understanding of English, hired an English-speaking office manager in March 2001 to handle all correspondence and to address safety and compliance issues. Despite these efforts, Respondent's president did not learn of the Notices of Infraction until he personally retrieved the Final Notices of Default at the United States Post Office.

4. Upon questioning its office manager, Respondent's president determined that the office manager had apparently misunderstood the proper response time for the Notices of Infraction.
5. Respondent has accepted responsibility for its unlawful conduct.
6. Respondent has undertaken prompt efforts to educate its drivers about the requirements of 20 DCMR 900.1, and has hired a new office manager to better ensure timely responses to official government correspondence in the future.
7. There is no evidence in the record of a past history of noncompliance by Respondent.
8. In light of Respondent's explanation and an anticipated multi-lingual effort on the part of the Government to educate the public about the requirements of 20 DCMR 900.1, the Government has recommended a suspension of the assessed statutory penalties and a reduction of the authorized fine to \$250 per violation, for a total fine of \$500.

### **III. Conclusions of Law**

1. Respondent committed two violations of 20 DCMR 900.1 on October 5, 2001. A fine of \$500 is authorized for each violation of this regulation. *See* 16 DCMR §§ 3201.1(b)(1) and 3224.3(aaa). In light of Respondent's acceptance of responsibility, its prompt efforts to educate its drivers about the proscriptions of §

900.1 and lack of evidence in the record of a past history of non-compliance, I will reduce the fine for each violation to \$250, for a total fine of \$500. *See* D.C. Official Code §§ 2-1802.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

2. Respondent has also requested a reduction or suspension of the assessed statutory penalties. The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer it within twenty days of the date of service by mail. If a party cannot make such a showing, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the statutory penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f).
3. In this case, Respondent has explained that, although it specifically hired an English-speaking office manager to handle all correspondence and to address safety and compliance issues, that office manager misinterpreted the response time for the Notices of Infraction. Such an explanation does not constitute good cause to vacate or suspend the assessed statutory penalties. *See DOH v. Hawk Enterprises, Inc.*, OAH No. C-00-10370 at 4 (Final Order, January 5, 2001) (holding that misinterpretation of clear response instructions on Notice of Infraction form does not constitute good cause for failing to timely respond).

4. The Government, through its counsel, has recommended a suspension of the statutory penalties as part of a planned educational initiative. In light of that recommendation, I conclude that a substantial reduction of the assessed statutory penalties is appropriate. Accordingly, the statutory penalties will be reduced in each case to \$250, for a total of \$500.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay fines and statutory penalties in the total amount of **ONE THOUSAND DOLLARS (\$1,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including

the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/      **04/26/02**

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Mark D. Poindexter  
Administrative Judge